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No. 83-1144

IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1983

GILES GARMON, ET AL.,
Petitioners

V.

MICHAEL A. GALVAN,
Respondent

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI

JAMES W. GEORGE
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315 Westgate Building
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Austin, Texas 78701
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QUESTION PRESENTED

I. WHETHER A PROBATION OFFICER AND HIS SUPERVISORS AND HIS DEPARTMENT ARE ABSOLUTELY IMMUNE FROM SUITS FOR DEPRIVATIONS OF CIVIL RIGHTS BROUGHT PURSUANT TO 42 U.S.C. SECTION 1983 OR WHETHER THE PROPER STANDARD OF APPLICATION IN THESE INSTANCES IS QUALIFIED IMMUNITY.

PARTIES

Petitioners are Peggy Grose, Giles Garmon, and the Travis County Adult Probation Department, the defendants in the district court.

Respondent is Michael A. Galvan, the plaintiff in the district court.

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No. 83-1144

IN THE
UNITED STATES SUPREME COURT

OCTOBER TERM, 1983

GILES GARMON, ET AL.,
Petitioners

V.

MICHAEL A. GALVAN,
Respondent

On Petition For Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITIONERS' PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

The Respondent respectfully prays that the writ of certiorari prayed for by

Petitioners herein, be in all respects denied and that the judgment of the United States Court of Appeals for the Fifth Circuit, entered in this case on July 25, 1983, rehearing en banc denied September 12, 1983, remain undisturbed.

OPINIONS BELOW

The opinion of the Court of Appeals is reported at 710 F. 2d 214, reh. denied, 716 F. 2d 901, (501 Cir. 1983) (Appendix Items 1 and 2). The order of the United States District Court is reproduced in the Appendix as Item 3.

JURISDICTION

Respondent does not deny that this Court has jurisdiction of the case herein presented.

STATUTORY PROVISIONS INVOLVED

Section 1983 of Title 42 of the United States Code provides in pertinent part:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or person with the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other

proper proceeding for redress. For the purposes of this section, any act of congress applicable exclusively to the District of Columbia shall be considered to a be statute of the District of Columbia.

STATEMENT OF THE CASE

Respondent, Michael A. Galvan, was sentenced to three years probation on October 24, 1979, on a theft conviction. On April 9, 1981, a person named Michael Galvan was arrested in Austin, Texas, for driving while intoxicated and unlawfully carrying a weapon. Peggy Grose, a Travis County Probation Officer, noticed Galvan's name on the jail roster. Assuming that the person in jail was the Respondent, she prepared a motion to revoke his

probation. An arrest warrant was issued and Galvan was arrested on June 24, 1981. He remained incarcerated for twenty days. The motion to revoke probation was withdrawn on July 13, 1981, when it was ascertained that the person arrested on April 9, 1981, and the Respondent were different persons.

Respondent then filed this Section 1983 suit against a number of individuals including Grose, Giles Garmon, Director of the Travis County Adult Probation Department, and the Travis County Adult Probation Department. Respondent contended that his constitutional rights were violated by the actions of the probation department in erroneously causing his arrest and incarceration. The case went to trial. At the close of

plaintiff's case, the district court granted a directed verdict to all defendants on the ground that they were protected by absolute immunity. Respondent appealed to the Fifth Circuit Court of Appeals and argued that Petitioners are protected only by qualified immunity, and not absolute immmunity.

The Court of Appeals reversed and remanded the district court's decision, citing the recent decision in Harlow v. Fitzgerald, ___ U.S. ____, 102 S.Ct. 2727, 73 L. Ed. 2d 396 (1982) and certain decisions of the Fifth Circuit as authority for limiting the affirmative defense of Petitioners to one of qualified good faith immunity. See Williams v.

Rhoden, 629 F.2d 1099 (5th Cir. 1980) and Douthit v. Jones, 619 F. 2d 527 (5th Cir. 1980).

REASONS WHY THE PETITIONERS' WRIT SHOULD BE DENIED

Spaulding v. Nielson, 599 F. 2d 728 (5th Cir. 1979), the case relied upon by the Petitioners and the trial court for the proposition that the Petitioners should be granted absolute immunity, was properly distinguished from Respondent's cause of action, by the Court of Appeals. In Spaulding the Court ruled that probation officers who make a presentence report at the expressed direction of a judge enjoy absolute immunity from suit for damages under 42 U.S.C. 1983. The Court emphasized in Spaulding that its

decision should be read narrowly and stated "[w]e have no occasion to decide today, and do not decide whether immunity will shield probation officers from civil liability for official activities apart from the presentence report processes." Footnote number 2 at p. 729.

In Galvan v. Garmon, 710 F. 2d 214, 215, (5th Cir. 1983) the Court of Appeals pointed out that whereas in Spaulding the probation officer was acting at the express direction of the judge, in the immediate case the probation officer acted at her own initiative and at a different and much later phase of the criminal process less intimately associated with a judge's directives.

In Galvan the Probation Officer acted in ministerial manner by filing a motion to revoke Mr. Galvan's probation, based on her inaccurate determination that Mr. Galvan committed the subsequent offenses of Driving While Intoxicated and Unlawfully Carrying a Weapon. The probation officer and her department brought the Motion To Revoke Galvan's probation to the judge due to their perceived duty to revoke, not because the judge asked them to do any act, or even knew about the probationer's alleged acts.

The proper rule governing the question of immunity of probation officers was set out in Harris v. Powers, 520 F. Supp. 111 (W.D. Wisc. 1981). In Harris the Plaintiffs sued the probation department

and the probation officer for damages under 42 U.S.C. 1983 because they moved to revoke his probation before he could obtain an adversarial proceeding. In a learned treatment of the immunity caselaw beginning with Imbler v. Pachtman, 424 U.S. 409 (1976) and continuing through Butz v. Economu, 438 U.S. 478, (1978), to date of the Harris decision, the court reasoned that there is a significant difference in treating actions taken in the performance of adjudicatory functions, which are absolutely immune, from those actions taken outside of the performance of such functions, which are not absolutely immune. To qualify as adjudicatory

(1) there must be an adversarial hearing with the official trier of fact wherein each party presents evidence and the parties are entitled to a record of the decision, including findings of fact and conclusions of law; and

(2) the official must make a judgmental act. See Harris at pps. 114 and 115. After considering the facts and after applying the standard of Scheuer v. Rhodes, 416 U.S. 232 (1974), the Court ruled that the defendant's probation officers and their department were not entitled to absolute immunity because their actions of moving to revoke Plaintiff's probation without a hearing did not qualify as an adjudicatory act.

Galvan is much more like Harris than it is like Spaulding, because in Galvan the probation department filed a motion to revoke before a judge even knew about their actions, and Galvan was granted no adversarial hearing prior to the filing of the motion to revoke. Furthermore, in the case of a subsequent offense, the probation officer is acting in a ministerial capacity because motions to revoke probation are automatically filed when a probationer commits a subsequent offense.

In Fowler v. Cross, 635 F. 2d 476 (5th Cir. 1981), the Court held that the Parole Commission, and its employee who had not taken adequate measures to insure prisoners would not be transferred from

the county jail before a preliminary hearing, were not entitled to even assert qualified immunity, let alone absolute immunity. The clear inference from Fowler is that while judges and their probation officers may be immune if the probation officer is acting at the express direction of the judge, those officers are certainly not absolutely immune if they fail to follow proper procedures or act in a ministerial manner outside of the judge's direct orders and outside of the formal adjudication process. The proper standard of analysis in this instance is a qualified immunity standard in keeping with Scheuer v. Rhodes, supra, and its progeny, including Harlow v. Fitzgerald, ____ U.S._____, 102 S.Ct.

2727, 73 L.Ed. 2d. 396 (1982).

Furthermore, the Courts in Harris, Fowler, Scheuer, and Harlow followed the policy enunciated in Henriksen v. Bentley, 664 F. 2d 852, 855 (10th Cir. 1981), that "[A]bsolute immunity has been granted sparingly and only in cases where the public interest in unfettered decision making outweighs the individual interest in relief pursuant to Section 1983." In Henrikson a clerk of court was sued under 1983 for allegedly failing to pick up legal mail mailed to the Post Office by Plaintiff. The Court rejected the Clerk's defense of absolute immunity and stated that the proper test was one of qualified immunity. The Court further placed the burden of proof on the Clerk to establish

his entitlement to immunity.

Henrikson cited Williams v. Wood, 612 F. 2d 982 (5th Cir. 1980) and partly relied on that decision in arriving at its qualified immunity standard. In Williams the appeals court stated that clerks of judges enjoy absolute immunity only when acting in a non-routine manner under command of court decrees or under explicit instructions of a judge, at 985. The Court went on to rule that only qualified immunity attaches to clerks with the exception of the above mentioned narrowly defined limits of absolute immunity. This test should also apply to probation officers, since they are even further removed from the decisions of judges than clerks. Certainly there is no public

interest in the unfettered decision making of individual probation officers, many of whom are undertrained and under qualified. And under the Petitioner's theory, such probation officers would not be liable for their actions even if Plaintiffs could prove they acted with actual malice in denying Constitutionally protected rights.

Henrikson, Williams, Fowler, and Harris and now Harlow trace their reasoning from the United States Supreme Court's pronouncements on the question of immunity and government officials. This Court has stated that absolute immunity can not be freely extended beyond the long recognized common law protection granted to judges acting in their official

capacities, Pierson v. Ray, 386 U.S. 547, 87 S.Ct. 1213, 18 L. Ed. 2d 288 (1967),; State legislators acting within their sphere of legitimate legislative activity, Tenney v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 95 L.Ed 1019 (1951); and State prosecuting attorneys fulfilling their duties of initiating and pursuing criminal prosecuting in presenting the states' case, Imbler v. Pachtman, 424 U.S. 409, 96 S. Ct. 984, 47 L. Ed 2d 128 (1976). Indeed, the modern trend has been to abandon the absolute immunity standard in almost all instances and to adopt a general rule in suits involving section 1983 of qualified immunity.

In the landmark cases of Scheuer v. Rhodes, 416 U.S. 232, 94 S. Ct. 1683, 40

L. Ed 90 (1974), and Wood v. Strickland, 420 U.S. 308, 95 S. Ct. 992, 43 L. Ed. 214 (1975), the Court held that the rule governing the actions of governmental officials should be one of qualified immunity. In so doing, the court stated "that...qualified immunity is based upon the scope of discretiion and responsibilities of the office and all circumstances as they reasonably appear at the time of the action on which liability is sought to be based. It is the existence of reasonable grounds for the belief formated at the time and in light of all circumstances, coupled with good-faith belief, that affords basis for qualified immunity of executive officers for acts performed in the course of

official conduct." Id. at 247-48.

This concept of qualified immunity was further refined in Wood v. Strickland, supra, where the Court held that a school official is not immune from damages under Section 1983 if his action can not be reasonably characterized as being in good faith. "The official himself must be acting sincerely and with a belief that he is doing right, but an act violating a student's constitutional rights can be no more justified by ignorance or disregard of settled undisputed law on the part of one entrusted with the supervision of student's daily lives than by the presence of actual malice." Id at 321. Respondent submits that these are the proper considerations to apply when the trier of

fact is determining whether immunity should attach, not an absolute immunity standard which is blindly applied in disregard of the real facts of the particular case.

In Harlow v. Fitzgerald, ___ U.S.__, 102 S. Ct. 2727, 73 L.Ed 2c 396 (1982) the Court cited Butz v. Economu, supra, for the proposition that the "alter ego" theory of immunity is rejected. This Court noted that Mr. Butz would be granted only qualified immunity even though he was the Secretary of Agriculture on the President's cabinet, and the Court further noted that the greater power an official has, the greater potential there is for lawless conduct. At 73 L. Ed. 2d 404. So, the Petitioners argument that they

should be accorded derivative absolute immunity based on the judge's absolute immunity should also fail; it sweeps too far and allows for too great a potential for abuse by probation officers who are often far removed from a judge, and are certainly much further removed from the various judges than a member of the Cabinet is removed from the President.

Harmon v. Superior Court of State of California, 329 F.2d 154 (9th Cir. 1964) and Burkes v. Callion, 433 F. 2d 318 (9th Cir. 1970) cert. denied, 403 U.S. 908 (1971), the cases relied upon by Petitioners for the proposition that there is a conflict of opinion within the Courts of Appeal as to the degree of immunity

which should be accorded to probation officers, were decided long before the above cited decisions of Scheuer v. Rhodes, supra, Wood v. Strickland, supra, Butz v. Economou, supra, and Harlow v. Fitzgerald, supra. The Burkes and Harmon Courts ruled in the manner they did because they lacked this Court's guidance. The Court of Appeals in Galvan however recognized the long standing doctrine of qualified immunity as set out in the above cases and properly accorded only qualified immunity to the Petitioners; therefore, there is not a legitimate conflict of opinion within the nation's Courts of Appeal on the issue presented herein which would justify this Court's consideration of Petitioners' cause.

It is also important to remember that the Courts have consistently granted only qualified immunity to police officers in civil rights actions brought under 42 U.S.C. Section 1983, Glasson v. City of Louisville, 518 F 2d. 899 (C.A. Kentucky 1975), cert denied, 423 U.S. 930, 96 S. Ct. 280, 46 L. Ed. 2d 258. If a police officer is granted only qualified immunity when he is often forced to act in a split second life and death situation, how is it justifiable to accord a probation officer absolute immunity, when he has had ample time to review his files, interview witnesses and arresting authorities, and check data and vital statistics in the comfort of his air conditioned office? The Court of Appeals recognized that such

a ruling would be untenable and properly restricted the granting of absolute immunity to the previously stated narrow limitations.

In addition to allow a standard of absolute immunity to extend to individual probation officers regardless of how far their actions are removed from a judge's order or control would thwart the intent of Section 1983 since the very purpose of the statute is to give parties deprived of constitutional rights, privileges, and immunities a remedy against an official's abuse of his position. Monroe v. Pape, 365 U.S. 175, 81 S. Ct. 473, 5 L. Ed 2d 492 (1973). To allow Probation Departments and Probation officers to run roughshod over probationers' rights in a

non-adjudicatory proceedings all the while shouting "absolute immunity!" would unnecessarily undermine the very foundation and thrust of section 1983.

Also, the trial court's holding that Tex. Code Crim. Proc. Ann. art. 42.12 places probation departments within the purview of State courts does not cloak Petitioners with absolute immunity in a federal civil rights action. Said statute states: "It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality (emphasis added), that have acted as barriers to effective systems of probations and paroles in the public interest." It is obvious that the intent of Article 42.12 is not to

completely cast aside Respondent Galvan's constitutional rights as protected by 42 U.S.C. Section 1983 by allowing the probation officers and their department to hide behind the shield that they are appendages of the State Courts; and even if such an intent were the case, the Texas statute is pre-empted by 42 U.S.C. 1983, and therefore is of no force or effect in Respondent's federal civil rights action. See Gibson v. Bass River Tp. 82 F.R.D. 122, D.C.N.J. 1979.

CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Respondent prays that the Petition for Writ of Certiorari be in all respects

denied and that this Court not disturb the Court of Appeals' ruling herein.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing Respondent's Brief In Opposition to Petitioners' Petition for Writ of Certiorari, was this day mailed to Mr. Charles R. Burton, MINTON, BURTON, FOSTER & COLLINS, 1100 Guadalupe Street, Austin,

Texas 78701; and Ms. Leslie A. Benitez, Assistant Attorney General of the State of Texas, P.O. Box 12548, Capitol Station, Austin, Texas 78711.

Dated: March 30, 1984.

JAMES W. GEORGE

APPENDIX

Item 1

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 82-1261

D.C. Docket No. A-81-CA-286

MICHAEL A. GALVAN
Plaintiff-Appellant,

versus

GILES GARMON, ET AL.,
Defendants-Appellees.

Appeal from the United State District Court
for the Western District of Texas

Before RUBIN, GARZA and WILLIAMS,
Circuit Judges.

JUDGEMENT

This cause came on to be heard on the record on appeal and was argued by counsel;

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, reversed; and that this cause be, and the same is hereby remanded to the said District Court in accor-

dance with the opinion of this court.

July 25, 1983

ISSUED AS MANDATE:

MICHAEL A. GALVAN,
Plaintiff-Appellant

v.

GILES GARMON, et al.
Defendants-Appellees.

No. 82-1261

UNITED STATES COURT OF APPEALS,
Fifth Circuit.

July 25, 1983

Probationer brought section 1983 damage suit against state probation officer who mistakenly caused his arrest and incarceration. The United States District Court for the Wester District of Texas, Lucius Desha Bunton, III, J., directed verdict for probation officer and other defendants on ground that probation officer was cloaked with absolute immunity for her actions. The Court of Appeals held that probation officer was entitled only to qualified immunity.

Reversed and remanded.

Appeal from the United States District Court for the Western District of Texas.

Before RUBIN, GARZA and WILLIAMS, Circuit Judges.

PER CURIAM:

We are presented here with the narrow question of whether a state probation officer, who mistakenly causes the arrest and incarceration of a person on probation, may claim absolute or only qualified immunity in a § 1983 damage suit. The district court below directed a verdict for defendant-appellees at the close of plaintiff-appellant's case, on the ground that the probation officer was cloaked with absolute immunity for her actions. Since we find that the probation officer in the immediate case was only entitled to qualified immunity, we vacate the district court's order and remand.

Appellant, Michael Galvan, was sentenced to three years probation on October 24, 1979, on a theft conviction. On April 9, 1981, a person named Michael Galvan was arrested in Austin, Texas, for driving while intoxicated and unlawfully carrying a weapon. Peggy Grose, a Travis County probation officer, notices Galvan's name on the jail roster. Assuming that the person in jail was appellant, she prepared a motion to revoke his probation. An arrest warrant was issued and Galvan was arrested on June 24, 1981. He remained incarcerated for twenty days. The motion to revoke probation was withdrawn on July 13, 1981, when it was ascertained that the person arrested on April 9, 1981, and appellant were different persons.

Appellant then filed this § 1983 suit against a number of individuals including Grose, Giles Garmon, Director of the Travis County Adult Probation Department, and the Travis County Adult Probation Department. Appellant contended that his constitutional rights were violated by the actions of the probation department in erroneously causing his arrest and incarceration. The case went to trial. At the close of plaintiff's case, the district court granted a directed verdict to all defendants on the ground that they were protected by absolute immunity.

Appellant appeals, claiming that appellees are protected only by qualified immunity.

The Supreme Court has recently noted that absolute immunity protects "officials whose special functions or constitutional status requires complete protection from suit", such as legislators, judges, prosecutors and executive officers engaged in adjudicative functions. *Harlow v. Fitzgerald*, ___ U.S. ___ 102 S.Ct. 2727, 2732 73 L.Ed.2d 396 (1982). Although *Harlow* involved a suit brought against a federal officer under the Constitution, the Court said that it would be untenable to draw a distinction between such a suit and one brought against state officers under § 1983. *Id.* 102 S.Ct. at 2738 n. 30 (quoting *Butz v. Economou*, 438 U.S 478, 504, 98 S.Ct. 2894, 2909, 57 L.Ed.2d 895 (1978)). The Court in Harlow noted that absolute immunity for judicial functions "has extended no further than its justification would warrant." *Id.* 102 S.Ct. at 2735. It stated that "[f]or executive officials in general...our cases make plain that qualified immunity represents the norm." *Id.* 102 S.Ct. at 2733. We find that *Harlow* controls this case.

[1] The district court based its decision on *Spaulding v. Nielsen*, 599 F.2d 728 (5th Cir. 1979). In *Spaulding* this Court held that federal probation officers preparing and submitting a presentence report in a criminal case are protected by absolute immunity because the report is an integral part of the sentencing process and because the officer acts at the direction of the court in preparing the report. His activity, therefore, is " 'intimiately associated with the judicial phase of the criminal process.' " *Id.* at 729 (quoting *Imbler v. Pachtman, 424 U.S. 409, 430, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)). We find Spaulding* not controlling in the case at hand. Whereas in *Spaulding* the probation officer was acting as the direction of the court during the presentence report process, in the immediate case the probation officer acted at her own initiative and at a different phase of the criminal process less intimately associated with the judiciary. The *Spaulding* court

specifically reserved the question here at issue:

> We have no occasion to decide today, and do not decide, whether immunity will shield probation officers from civil liability for official activities apart from the presentence report process.

599 F.2d at 729 n. 2.

[2] In light of the Supreme Court decision in *Harlow*, as well as the cautionary notes struck in other cases rendered by this Court,[1] we find no absolute immunity in the immediate situation. Qualified immunity, as redefined by the Supreme Court in *Harlow*, permits state officers to be subjected to suits only if the officials' conduct clearly violated an established statutory or constitutional right of which a reasonable person would have known.[2] 102 S.Ct. at 2738. In the immediate case, this standard does not dampen the ardor of public officials and the discharge of their duties. Yet at the same time it keeps an avenue open for vindication of constitutional guarantees. Thus we conclude that the immediate case does not present the sort of "special functions or constitutional status (which) requires complete protection from suit," *Harlow, supra*,

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[1] *See, e.g., Williams v. Rhoden*, 629 F.2d 1099 (5th Cir. 1980); *Douthit v. Jones*, 619 F.2d 527, 534 (5th Cir. 1980 (and cases cited therein).

[2] We do not pass upon either the question of whether appellant has a cause of action under 42 U.S.C. § 1983 or the question of whether appellant has alleged or proved that appellees clearly violated an established constitutional right of which they reasonably should have know. The district court did not reach the qualified immunity issue, we and remand for the court's consideration of this question.

102 S.Ct. at 2732, which would justify further extension of absolute immunity to the immediate case.[3]

REVERSED AND REMANDED.

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[3] In so concluding, we do not pass upon whether appellee Travis County Adult Probation Department is a proper defendant or whether, if it is, if it is to be considered analogous to a municipality. Nor do we pass upon what defenses are available to it if it is to be considered analogous to a municipality. *See Owen v. City of Independence*, 445 U.S. 622, 100 S.Ct. 1398, 63 L.Ed.2d 673 (1980). These arguments were neither briefed nor asserted on appeal.

Item 2

MICHAEL A. GALVAN,
Plaintiff-Appellant

V.

GILES GARMON, et al.
Defendants-Appellees.

No. 82-1261

UNITED STATES COURT OF APPEALS,
Fifth Circuit.

September 12, 1983

Appeal From the United States District Court
for the Western District of Texas

ON SUGGESTION FOR REHEARING EN BANC
(Opinion July 25, 1983,
5 Cir., 1983, 710 F.2d 214)

Before RUBIN, GARZA and WILLIAMS,
Circuit Judges.

PER CURIAM:

Treating the suggestion for rehearing en banc as a petition for panel rehearing, it is ordered that the petition for panel rehearing is DENIED. No member of the panel nor Judge in regular active service of this Court having requested that the Court be polled on rehearing en banc (Federal Rules of Appellate Procedure and Local Rule 35), the suggestion for Rehearing En Banc is DENIED.

Item 3

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CIVIL ACTION NO. A-81-CA-286

(Filed April 23, 1983)

MICHAEL A. GALVAN,
Plaintiff-Appellant

v.

GILES GARMON, et al.
Defendants-Appellees.

ORDER FOR DIRECTED VERDICT FOR DEFENDANTS GARMON, GROSE AND TRAVIS COUNTY ADULT PROBATION DEPARTMENT

Came on for consideration this day by the Court, after the close of Plaintiff's evidence, Defendants' Motion Pursuant to Federal Rules of Civil Procedure 50(a) for a Directed Verdict for Defendants Peggy Grose, Giles Garmon, and the Travis County Adult Probation Department.

After consideration of the evidence and arguments of counsel, the Court is of the opinion that said Motion should be granted, in that probation officers and the Travis County Adult Probation Department are entitled to absolute, judicial immunity from liability from Plaintiff's claim for damages in this suit. In reaching this decision, the Court follows the rationale of the Fifth Circuit Court of Appeals in *Spaulding v. Nielsen*, 599 F.2d 728 (5th Cir. 1979), and relies upon the statutory procedures

established by the State of Texas for the appointment, supervision, and compensation of probation officers by the state judiciary as outlined in Article 42.12 TEXAS CODE OF CRIMINAL PROCEDURE, Sections 1, 3, 8(a), and 10(a), (b), and (i). Article 42.12 makes it clear that the probation officers and department are components of the state judiciary. It is therefore

ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Directed Verdict in favor of Peggy Grose, Giles Garmon, and the Travis County Adult Probation Department is hereby granted.

SIGNED AND ORDERED ENTERED on this the 22nd day of April, 1982, at Austin, Texas.

LUCIUS D. BUNTON
United States District Judge